IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CRIMINAL APPEALLTE JURISDICTION.

CRIMINAL APPEAL NO. 71 OF 2002

Umaji Chandu Chavan ....Appellant.
(Orig.Accd.)

V/s

The State of Maharashtra .... Respondents.

Mr.Ujwal R. Agandsurve, Adv. for the appellant.

Mr.D.R.More, APP for the State.

CORAM: V.G. PALSHIKAR, Ag.C.J.
AND
SMT.NISHITA MHATRE, J.

13th Sept., 2006.

ORAL JUDGMENT: (Per Palshikar, Ag. C.J.)

Being aggrieved by the judgment and order of conviction and sentence passed by the learned Additional Sessions Judge, Solapur in Sessions Case No.71 of 2000 on 3.12.2001 the appellant-accused has preferred this appeal on the grounds mentioned in the memo of appeal as also verbally canvassed before us.

2. With the assistance of the learned Advocate for the appellant as also the learned Public Prosecutor we have scrutinized the entire evidence on and reappreciated the same.

3. The prosecution story briefly stated is that on 23.12.2000 at about 2.40 p.m. while Rajashree and Ratnamala were grazing their cattles in the field known as Chikane belonging to Shankar Adal Vithal who had brought bazar for “Wel-Amvasya” festival was coming on bicycle. Umaji Chavan who was also working in the filed called Vithal and some oral arguments took place amongst them. Accused Umaji whipped out a knife from his waist and tried to assault Vithal. However Vithal avoided the said knife blow and as a result whereof knife fell down from the hands of Umaji. The accused then picked up an axe which was lying there and gave blow on both the knees of Vithal because of which Vithal fell down. Accused thereafter gave another axe blow on the head and throat of Vithal. Ratnamala and Rajashree who were there at the relevant time saw the incident and went home to inform Manubai. Manubai came to the spot with both of them and saw her father was lying in pool of blood. Manubai thereafter went to Salgar Vasti police station, Solapur and informed the police. Accordingly a station diary was prepared and crime No.73 of 2000 u/s.302 of IPC came to be registered. P.I. Shaikh had drawn the inquest panchnama, spot panchnama and forwarded dead body of the victim to the hospital for post mortem. During the preparation of panchnama he had seized blood stained clothes, mud mixed with blood and other articles which were lying there viz. knife and axe. Chemical Analyser' report and post mortem report were obtained. Statements of witnesses were recorded and charge sheet came to be filed.

4. The prosecution in order to prove its case examined eight witnesses and the learned trial Judge as aforesaid on the basis thereof convicted the accused. While arguing the appeal for the accused it was contended by the learned counsel that P.W.1 who was examined as eye witness by the prosecution and is the daughter of the deceased has turned hostile. It gives a strong blow to the entire case of the prosecution and on this ground alone the judgment of conviction and sentence is liable to be set aside. According to him the learned trial Judge committed an error in so heavily relying on the testimony of P.W.4 as that witness was a child of 11 years when the incident occurred. According to him the entire evidence on record is grossly inadequate to warrant conviction for murder as recorded by the learned trial Judge. These submissions were countered by the additional public prosecutor representing the State, according to whom the eye witness account of P.W. 4 is duly corroborated by medical evidence given by medical officer P.W.3. It is further corroborated from the blood stained knife and axe seized from the spot. Both had blood stains. These facts as disclosed by panchas on record completely corroborate the testimony of P.W.4 who saw the incident and has described exactly as it occurred. According to the prosecution therefore merely because one eye witness has turned hostile the conviction cannot be held bad.

5. From the testimony of eye witnesses and the documentary evidence as tendered by the prosecution, the prosecution has proved beyond doubt the

following circumstances:

i) The accused had grudge against the victim as will be seen from deposition of P.w.5;

ii) The accused was seen assaulting the victim by P.W.4 who has given eye witness account of the same;

iii) The eye witness account as given by P.W.4 is duly corroborated by the medical evidence of P.W.3 who states that the injuries found on the body of deceased correspond to the statement of P.W.4 who states as to how the assault occurred and where the blows were given.

6. The testimony of P.W.4 is further corroborated by recovery of knife and axe from the spot as disclosed by spot panchnama are duly proved. It clearly corroborates the statement of the witness that when the accused first assaulted the victim knife fell from his hands and he then used the axe to assault the victim. The knife and axe both were blood stained.

7. Taking into consideration these proved circumstances and the testimony of eye witness duly corroborated by the intrinsic evidence it cannot be said that the learned trial Judge committed any error in convicting the accused as he did. We are in total agreement with the findings recorded by the learned trial Judge. We also come to the same conclusion on independent appreciation of the evidence as a result of which, in our opinion, the appeal must fail and be dismissed. Appeal accordingly stands dismissed.